

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

FREDERICK EDWARD WALKER,

Plaintiff,

v.

CITY OF RENTON, et al.,.

Defendants.

CASE NO. C11-2114 RAJ

ORDER

This matter comes before the court on a defendants' motion for sanctions¹ and for attorney's fees for plaintiff's failure to appear at a noticed deposition. Dkt. # 24. The issues arise out of counsel for plaintiff's lack of effective communication regarding, at a minimum, the exact dates that he would be unavailable due to a medical condition. The dates of his unavailability due to his hospitalization are not confidential and he should have communicated those dates to opposing counsel and to the court before he was hospitalized.

Defendants have presented evidence that the notice of deposition to plaintiff was mailed via United States mail. Dkt. # 25 at 6. Nevertheless, plaintiff's counsel claims

¹ Defendants have withdrawn their request for dismissal or striking plaintiff as a trial witness, and now only seek attorney's fees for plaintiff's non-appearance at his deposition.

1 that he never received it. Dkt. # 39 (Muenster Decl.) ¶¶ 8-9. Prior to his hospitalization,
2 counsel for the parties exchanged a series of emails between January 8 and January 17,
3 2013 regarding deposition dates and plaintiff's motion for extension of time, but were
4 unable to reach an agreement. Dkt. # 26 at 5-9. Counsel for defendant advised counsel
5 for plaintiff that he was going to note the deposition of his client at defendants'
6 convenience because the dates kept changing. Dkt. # 26 (Thorsrud Decl.) ¶ 2. On
7 January 18, 2013, defendants mailed the notice of deposition. *Id.* ¶ 3; Dkt. # 25 (Clarke
8 Decl.) ¶ 2. On January 20, 2013, counsel for plaintiff was hospitalized, and he was
9 discharged on February 11, 2013. However, because counsel has provided a declaration
10 under penalty of perjury that he never received the deposition notice by mail or by e-mail,
11 the court finds that attorney's fees are not warranted at this time.

12 For all the foregoing reasons, defendants' motion for sanctions and attorney's fees
13 is DENIED. Dkt. # 24.

14 Dated this 22nd day of May, 2013.

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18 The Honorable Richard A. Jones
19 United States District Judge
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